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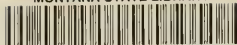
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**the Governor's Task Force
to
Renew Montana Government**

PREPARING *for a* NEW CENTURY

Final Recommendations ■ October 1994

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A Message from Task Force Chairman Gary Buchanan

Dear Governor Racicot:

As chairman of your Task Force to Renew Montana Government, I forward the following recommendations . . . recommendations that we hope could impact the lives of all Montanans.

While these recommendations will save Montanans many millions of dollars, their greater value may well lie in the conversion of excessive administrative costs to direct services. Montana is growing. Defining accountability now will lay the foundation for more effective delivery of services as demand for them grows.

Let me share with you some of the main themes that emerged from our work. We think there is too much administrative hierarchy in Montana government and not enough direct service. We need to remember why we have governments in the first place and keep the focus on service. We need well trained, adequately paid teachers, not more assistant superintendents. We need cops on



Task Force Chairman Gary Buchanan (left), Governor Marc Racicot and Project Director Dave Ashley

the beat, not more chiefs and desk sergeants. We need more university professors teaching classes, not more chancellors and assistants to the commission of higher education. We think the state should set local governments free to innovate and make the kinds of changes that work for their communities.

In our review of all levels of government, we addressed some pivotal questions:

- Are we over-managed?
- Do we really need certain services?
- Is it true that never have so few been governed by so many?
- Does the legislature overly restrict local governance and innovation?

Your charge to the Task Force was broad and comprehensive. In 10 fast-moving months, we've done our best to address your important concerns.

I would like to thank the Task Force members and our committee members for their time, skills and enthusiasm. This project was funded entirely by the private sector and we owe a great deal of gratitude to our more than 150 sponsors. We would also like to thank the very professional and skilled public employees who serve Montana citizens. We didn't meet one we didn't respect. Our criticisms and suggestions have been structural and certainly not personal.

We appreciate your administration lending us the very talented and tenacious Dave Ashley. Lynn Staley, Marci Lynn and Colleen Niklas deserve our gratitude and respect. Professor Corky Britain and Brad Snow with MSU's Burton K. Wheeler Center in Bozeman have been skilled and appreciated partners.

The statewide assistance of the Montana Ambassadors has been invaluable.

Finally, Governor, on behalf of all of us, let me thank you for the opportunity to serve our great state in this capacity. It has been an exciting, fun and rewarding 10 months. It has enhanced our love of Montana and our faith in its future. Where else but in this last best place could you participate in such a meaningful way?

We stand ready to assist you in advancing these recommendations to the Montana Legislature.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Buchanan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gary Buchanan

FINAL RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT

October 1994

Introduction

As 1994 began, Governor Marc Racicot asked 16 Montanans from widely diverse backgrounds to change the way government operates. By forming the Governor's Task Force to Renew Montana Government, the governor asked this group to provide the leadership for a thorough examination of government operations. The Task Force organized into three committees and expanded them to include additional Montanans with expertise in the areas of state government, local government and education. This report is divided into these three areas.

Working as a privately funded group, the Task Force has spent the last ten months scouring Montana for ideas on how these three major government sectors can be made more cost-effective and fair. After volunteering hours of their time to hear testimony and evaluate proposals, the Task Force is submitting the following recommendations to Governor Marc Racicot—recommendations ranging from combining the offices of the lieutenant governor and secretary of state, to requiring regular elections on local school district consolidation. **Specific recommendations of the Task Force appear in bold type.**

The Governor's Task Force to Renew Montana Government is privately funded by donations to the Burton K. Wheeler Center at Montana State University. The Burton K. Wheeler Center is a private, nonprofit institute dedicated to facilitating discussion of Montana's public policy issues.

GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT

Members of the Task Force

Gary Buchanan, Chairman	Peggy Jerrel
John J. "Jack" Burke, Vice Chairman	John Lawton
Rep. Shiell Anderson	Dr. Joe McDonald
Martin Burke	Kathy McGowan
Dr. Paula Butterfield	Gloria Paladichuk
Dave Ditzel	Linda Vaughney
Karen Barclay Fagg	Warren Vaughan
Eric Feaver	Sen. Jeff Weldon

Members of the State Government Committee

Martin Burke,* Chairman	Ed Jasmin
Karen Barclay Fagg,* Vice Chair	Kathy McGowan*
Rep. Shiell Anderson*	Butch Ott
Vern Bass	Jan Reagor
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Members of the Local Government Committee

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Rep. John Bohlinger	Alan Nicholson
Gary Carlson	Dr. Donald Robson
Eric Feaver*	Lloyd Wolery
Richard (Ric) Floren	

Dave Ashley, Project Director

*These committee members are also members of the Task Force.

COMMONLY ABBREVIATED AGENCIES IN THIS REPORT

Department of Administration (DOA)
Department of Commerce (DOC)
Department of Corrections and Human Services (DCHS)
Department of Family Services (DFS)
Department of Fish, Wildlife & Parks (FWP)
Department of Health & Environmental Sciences (DHES)
Montana Historical Society (MHS)
Department of Labor & Industry (DOL)
Department of Natural Resources & Conservation (DNRC)
Office of Public Instruction (OPT)
Department of Revenue (DOR)
Department of Social & Rehabilitation Services (SRS)
Department of State Lands (DSL)
Department of Transportation (DOT)

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STATE GOVERNMENT

EXECUTIVE BRANCH REORGANIZATION

The executive branch of Montana government is responsible for implementing policy adopted by the state legislature. With approximately 11,000 employees, the executive branch is by far the largest branch of state government. It is headed by the governor and five other elected officials (the lieutenant governor, secretary of state, attorney general, state auditor and the superintendent of public instruction).

The last major executive branch reorganization occurred in 1972 after Montana voters adopted a constitutional amendment to limit the number of executive branch departments to 20. Under a campaign of "Twenty is Plenty," Governor Forrest Anderson argued that transferring authority from approximately 200 boards and commissions to 20 departments would increase the effectiveness of Montana government and its accountability to its citizens.

Continuing reorganization is a necessity as new programs are developed and priorities change. Typically, reorganization efforts are piecemeal and largely confined to separate departments. Rarely does government step back and look at its entire structure.

At a time when private businesses are reorganizing every three to five years just to remain competitive, it is incumbent upon us to review our state government structure as well. This was one of the missions of the Governor's Task Force to Renew Montana Government. If the proposals described below are adopted, the work of the executive branch would be accomplished through fifteen major departments rather than the existing seventeen.

PUBLIC HEALTH/HUMAN SERVICES

Health and human service functions of state government should be consolidated into a single state agency, and increased authority for the planning, prioritizing, coordination and delivery of services should be shifted to the regional and community levels.

1. A new department, the Department of Public Health and Human Services, should be created. This Department would consolidate the majority of programs currently administered by the Department of Social and Rehabilitation Services and the Department of Family Services and the public health functions currently administered by the Department of Health and Environmental Sciences.
2. The human services functions currently administered by the Department of Corrections and Human Services, specifically mental health programs, developmental disabilities programs, substance abuse programs and the veterans' homes should also be transferred to the new Department of Public Health and Human Services.
3. Juvenile corrections (DFS) should also be included in the proposed Department of Public Health and Human Services.

4. The Building Codes Bureau (from DOC) should be consolidated with the Fire Prevention and Investigation Bureau (from Justice), boiler inspections (from DOL), health and life safety inspections for health care facilities (DHES) and day care/group home inspections (from DFS). These functions would be located in the Department of Labor.

5. The new Department of Public Health and Human Services should be designed to place significant authority for the planning, coordination, prioritizing and delivery of health and human services at the regional and community levels. The new department should include technology as a tool for enhancing communication and collaboration among service providers.

Background ■

Human services programs are currently provided by five human services departments (Social and Rehabilitation Services, Family Services, Health and Environmental Sciences, Corrections and Human Services and Labor and Industry). Building and equipment licensing functions are dispersed among various agencies of state government, including various health and human services agencies.

Discussion ■

The current system sometimes results in duplication, inconsistent policies and complexity for citizens needing governmental services. Furthermore, there is inadequate local and regional control over the planning, coordination and delivery of human services. Centralized administration of human services at the state level is necessary to ensure consistency in state policy, provide support services to the regional and local levels and achieve economic efficiencies. Greater authority, however, should be shifted to the regional and local levels. Increased authority at these levels can ensure more effective coordination of community health and human services, enhanced delivery of services and greater citizen/customer satisfaction.

Locating juvenile corrections within the Department of Public Health and Human Services enhances the continuity of services provided to youth, allows for a stronger community-focused treatment approach and avoids the stigmatism associated with treating juvenile offenders through a correctional department.

Facility inspection and licensing functions are currently located in five different agencies. This dispersion of responsibility results in inconveniences to businesses and individuals and inefficient use of staff resources.

Objectives ■

1. To enhance citizen access to health and human services and individual customer service.
2. To implement more responsive and cost effective delivery of services.
3. To ensure consistency and uniformity of policies, goals and missions in human services areas.
4. To simplify the administrative structure, making it more effective and increasing its accountability.
5. To localize human services functions and administration so as to address more effectively local and regional needs and priorities.
6. To utilize nonprofit social service agencies in addressing local and regional needs.

7. To encourage the consolidated contracting of services in various areas of Montana, utilizing third party expertise as appropriate.
8. To maximize use of technology to enhance services, stabilize costs and facilitate communication and cooperation among service providers.
9. To maximize opportunities offered by available federal funds.
10. To coordinate health and human services for individuals and families in a manner that addresses specific needs and assists people to become self-sufficient.
11. To consolidate the state's inspection and/or licensing functions for facilities within a single agency to achieve better use of limited staff resources and to streamline the inspection/licensing processes.



From left to right: Task Force members Martin Burke, chairman State Government Committee; Paula Butterfield, vice chairman, Education Committee and Senator Jeff Weldon

JUSTICE/PUBLIC SAFETY

1. The Consumer Affairs Office, including enforcement of unfair trade practices addressed under Section 30-14-201, MCA, et seq. (currently in the Department of Commerce) should be relocated to the Department of Justice. The Department of Justice should work with the Montana Chamber of Commerce to encourage the privatization of consumer protection through the creation of better business bureaus.
2. The Highway Traffic Safety Program should be transferred to the Department of Transportation. Currently it is "attached to" the Department of Justice, with the director of the program appointed by the governor. The program should continue its emphasis on law enforcement and safe driver behavior.
3. The Fire Prevention and Investigation Bureau should be relocated with other facility life/safety functions in the Department of Labor. Arson investigation, however, should remain within the Department of Justice.
4. The authority of the Motor Carrier Services Division (Department of Transportation) should be expanded to provide enforcement for vehicle registration and intrastate commercial drivers license laws.

Background ■

The Department of Justice (originally named the Department of Public Safety) is responsible for a broad range of public safety efforts. Some public safety or protection programs, however, remain outside of the department. For example, the Consumer Affairs Office is presently located in the Department of Commerce. In addition, while the administrator of the Highway Traffic Safety Division is appointed by the Governor, the program is “attached to” the Department of Justice. The department also has under its jurisdiction the Fire Prevention and Investigation Bureau.

Discussion ■

Consumer protection functions typically fall under the jurisdiction of a state’s attorney general. Although the Department of Commerce currently is responsible for consumer protection in Montana, the Department of Justice is often the initial point of contact for consumer complaints. Locating the consumer protection program within a law enforcement agency will elevate the stature of Montana’s consumer protection efforts as well as enhance coordination of those efforts.

Transferring the Highway Traffic Safety Division to the Department of Transportation would clarify reporting relationships for this program. Ten of 16 other western states locate this function within their transportation departments so that traffic safety functions can be better coordinated with highway safety design.

The fire prevention/investigation and fire code functions of the Fire Prevention and Investigation Bureau are more appropriately administered by the same agency responsible for building codes, boiler inspections, etc. Such consolidation can create efficiencies and result in enhanced service to citizens. (See earlier discussion under Public Health/Human Services.)

Expanding the authority of the Motor Carrier Services Division for vehicle registration and intrastate commercial drivers license laws will enhance enforcement of existing laws without the need for additional resources. The change will eliminate the need for Motor Carrier Services personnel to contact other law enforcement officers to enforce these laws.

Objectives ■

1. To strengthen and coordinate consumer protection functions.
2. To streamline administration by eliminating duplication and simplifying administrative structures.
3. To consolidate investigative and compliance functions, enabling individuals and businesses to avoid costly and frustrating duplication.

NATURAL RESOURCES

The natural resource functions currently housed in the departments of State Lands, Natural Resources and Conservation, and Health and Environmental Sciences should be restructured in a way that separates natural resource management functions and natural resource regulatory functions. Specifically, natural resource management functions should be consolidated within one agency known as the Department of Natural Resource Management. Likewise, natural resource regulatory functions should be consolidated within a single agency—the Department of Environmental Quality. Because of its unique client base and mission, the Department of Fish, Wildlife and Parks should generally remain as it is. While centralized administration is essential to consistency of policy, the new departments should be designed to shift greater responsibility to the regional and local levels.

1. The Department of Environmental Quality

- The proposed Department of Environmental Quality should be managed by a cabinet-level director. A Board of Environmental Review would provide public input and advice to the director regarding natural resource policy issues. The department would be responsible for permitting and reclamation decisions.
- The current functions of the Energy Division, including the Facility Siting Bureau (DNRC) and Reclamation Division (DSL), would be located in the Department of Environmental Quality.
- A new Compliance and Inspection Division would consist of inspectors and attorneys responsible for compliance with air, water, mineral and Superfund regulations.
- An impact assessment team should be created to prepare or contract for environmental assessments and environmental impact statements. Sufficient State Historical Preservation Office (SHPO) resources should either be designated as a project point of contact within the SHPO or be detailed to the Department of Environmental Quality to assist in the preparation of environmental assessments and environmental impact statements.
- Existing water quality programs (except riparian management and non-source point pollution, which would move to the proposed Department of Natural Resource Management) should be moved from the Department of Health and Environmental Sciences (DHES) to the Department of Environmental Quality. Public water supply and subdivision programs now in DHES should also be transferred to the Department of Environmental Quality. Additionally, those resources in the Department of Fish, Wildlife and Parks devoted to state water quality review and comment should be located in the Department of Environmental Quality.
- Waste management programs (including the Waste Vehicle Program) in DHES should be transferred to the Department of Environmental Quality.
- The environmental remediation program now in DHES should be transferred to the Department of Environmental Quality and combined with the abandoned mine program (DSL) and the abandoned wells function (DNRC).
- Air quality programs now in DHES should move to the Department of Environmental Quality.

2. The Department of Natural Resource Management

- A new water resources division would administer water rights, water adjudication, state water projects including dams and canals, flood plain management, water planning and dam safety. Dams, currently administered by the Department of Fish, Wildlife and Parks, should be administered by the Department of Natural Resource Management.
- A new trust lands management division would be responsible for forestry, grazing and croplands on state lands. The State Land Board would be attached to this division.
- A new resource conservation division would consolidate various landowner assistance programs such as urban forestry and private forestry assistance (DSL), ecosystem management and conservation districts (DNRC), riparian management and programs to reduce non-point source pollution (DHES).
- A fire management division (currently within the Forestry Division of DSL), including

hazard reduction, should be created to provide fire prevention and control for both trust lands and private lands.

- The resource development loan and grant programs now administered by DNRC, including the municipal wastewater grant program that is administered by DNRC and DHES, should be relocated to the Department of Natural Resource Management. The engineering-related portions of the wastewater program would be located in the proposed Department of Environmental Quality.

- The new department should seek to consolidate approximately 45 existing land and water field offices into regional offices.

- The Board of Oil and Gas Conservation (and the Oil and Gas Conservation Division), would be located in the Department of Natural Resource Management.

Background ■

Four agencies share primary responsibility for management of the state's natural resources. Fish, Wildlife and Parks (FWP) manages fish, wildlife and recreational resources. The Department of State Lands (DSL) manages approximately 5.2 million acres of state-owned lands, regulates mining on private and public lands, protects certain lands from fire, and regulates and provides assistance to private landowners. The mission of the Department of Natural Resources and Conservation (DNRC) is to ensure the wise management, development, conservation and use of Montana's natural resources. DNRC manages programs in water, soils and rangeland, energy conservation and renewable resources. The Department of Health and Environmental Sciences (DHES) has responsibility for air and water quality regulation and administers six major environmental quality laws: the Solid Waste Management Act, the Motor Vehicle Recycling and Disposal Act, the Montana Hazardous Waste Act, the Underground Storage Tank Act, the Superfund Act and the Comprehensive Environmental Clean-up and Responsibility Act. In addition, the State Historical Preservation Office includes functions which impact natural resource development.

Discussion ■

The existing four-agency approach unnecessarily fragments responsibility and decision-making in managing the State's natural resource programs. The results are inefficiencies that can be costly to Montana citizens and can result in inconsistent policies that endanger our resources. Furthermore, natural resource management and regulatory functions are housed in the same agencies, prompting concerns about potential conflicts of interest.

Objectives ■

1. To separate the management of natural resources from the regulation of those resources.
2. To minimize duplicative oversight and review, eliminate inefficiencies and minimize the potential for inconsistent decision-making by separate agencies.
3. To develop and implement a more comprehensive approach to natural resource management and regulation, thereby maintaining and enhancing Montana's precious resources for the benefit of all citizens.
4. To consolidate similar functions currently located in separate departments, thereby ensuring efficient use of staff resources.

5. To enhance public access to and utilization of the state's natural resource management and regulatory agencies.
6. To shift greater administrative authority from the state to regional and local levels.
7. To consolidate landowner assistance programs, thereby improving access to and coordination of those services.
8. To consolidate existing single-agency field offices into multiple agency field offices that allow better use of our human and technical resources.

COMMERCE/ECONOMIC DEVELOPMENT

1. Adopt a uniform administrative act and consolidate licensing boards in the Department of Commerce.

- A single uniform act should be enacted to regulate the business proceedings of each professional and occupational licensing board. The uniform act should include adequate due process for licensees facing disciplinary action, including notice of charges and a right to a hearing and appeal on such charges.
- Licensing boards currently situated in other state agencies should be transferred to the Professional and Occupational Licensing Bureau. Specifically, they are: Crane Operators, Boiler Inspectors and Blasters (DOL) and Water Well Drillers (DNRC). The regulatory functions of the water well program would be transferred to the proposed Department of Natural Resource Management.

Background ■

Thirty-two separate boards govern the licensing and regulation of occupations as diverse as architects, cosmetologists, plumbers and outfitters. Approximately 45,000 Montanans work in occupations governed by these boards. Each board is administered through unique laws and procedures.

Discussion ■

When all professional and occupational licensing boards are grouped in one agency, regulation of the professions becomes the highest priority of that agency.

Currently, there are no uniform rules for operating these boards. By standardizing authority and procedures, the legislature would reduce the amount of legislation necessary to continue updating 47 separate professional licensing acts. A uniform act would also create a timely and efficient method of addressing professional licensing issues.

The Washington Uniform Disciplinary Act, which incorporates many of the ideas of the National Regulatory Issues Task Force of the Council on Licensure Enforcement and Regulation, is a model for the type of legislation that should be considered. (The Act is available from the Professional and Occupational Licensing Bureau, Department of Commerce.)

The Professional and Occupational Licensing Bureau deals with issues that require a coordinated approach. A consolidated clerical staff can make better use of time, space and equipment. In the 1993 budget process, for example, individual boards requested an additional 12.5 employees to handle the workload of the Bureau. By pooling employees, DOC was able to address the workload with four new employees. Coordination of effort can further benefit the public by

accelerating the response to threats regarding public safety.

2. The Indian Affairs Program, housed in the Governor's Office but fiscally attached to the Department of Commerce, should be moved entirely to the Governor's Office.

3. The Task Force encourages the Governor to examine privatization (or moving in the direction of privatization) of the Montana Lottery. Accountability and public safeguards must be included in any restructuring.

Discussion ■

Several states, including Georgia, Louisiana and Kentucky, have recognized lotteries as unique activities and designated them as public corporations to achieve increased profitability.

Note: With this option, the following policy issues would arise: a) appointment of the director of the lottery; b) budgetary and policy control over the lottery, and c) relationship with state policies, e.g., accounting systems, procurement policies, retirement systems, personnel policies, compensation of staff, liability and administrative fees for services from the Department of Commerce.



Task Force members John Lawton, chairman, Local Government Committee and Dave Ditzel

Objectives ■

1. To create a single model administrative procedures act for all boards, thereby reducing the complexity of managing the boards.
2. To continue and strengthen the philosophy of centrally managing professional and occupational licensing boards within a single agency.
3. To consolidate programmatic and fiscal responsibilities of the Indian Affairs Program under one agency.
4. To achieve flexibility and increased profitability for the Montana Lottery.

ELECTED OFFICIALS

The offices of lieutenant governor and secretary of state should be combined, effective in 2001, to allow for a legislative referendum and vote of the people. Candidates for the new office would run on the same ticket as candidates for governor, and the office holder would

serve as the governor's successor if necessary. Until this consolidation is implemented, the Task Force encourages the governor to appoint his or her lieutenant governor as a department head. (The Board of Examiners should be reconfigured with the governor, attorney general and state auditor.)

Background ■

Currently, the lieutenant governor runs on the same ticket as the governor. The lieutenant governor does not manage any specific department of the executive branch. The secretary of state is a separately elected official of the executive branch. (It should be noted that there are six elected officials who manage the executive branch: governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction and state auditor.)

Montana is one of 42 states that elect a lieutenant governor. The only constitutional duty of Montana's lieutenant governor is succession. The lieutenant also acts as governor when the office of governor becomes vacant, the governor is disabled or is out of the state for 45 days.

Eight states do not have a lieutenant governor. Of these, four states designate the president of the senate as the successor to the governor; three designate the secretary of state, and one designates the speaker of the senate.

Lieutenant governors in other states often have constitutionally delegated duties. Some, like Montana's, have assigned tasks via statute or gubernatorial action. Some of these tasks include managing departments or presiding over the senate.

Montana's 1972 Constitution provides for an elected governor and lieutenant who run together on the same ticket. Previously, each office was elected separately. The constitutional change eliminated the potential for conflict when the lieutenant serves as acting governor.

Discussion ■

The first report of the National Commission on the State and Local Service, "Hard Truths/Tough Choices, An Agenda for State and Local Reform" (1993, The Nelson A. Rockefeller Institute of Government) recommended strengthening the executive authority to act "by reducing the number of independently elected cabinet-level officials." The Task Force believes that the executive would be strengthened by combining the offices of lieutenant governor and secretary of state. The consolidation would also achieve cost savings.

Functions of the existing offices—maintenance of business records and secured financial transactions, election administration, records management and maintenance of official acts of the executive branch and legislature, tracking appointments to boards and commissions and, in the case of the lieutenant governor, other duties assigned by the governor—would be combined.

Until this action, which requires a constitutional amendment, is put to a vote of the people, the governor has the authority to assign the lieutenant governor the duties of a line department under his or her control. Section 2-15-302 (2), MCA, reads "(2) the lieutenant governor shall perform the duties provided by law and those delegated to him by the Governor." The Task Force believes the lieutenant governor could serve as a department director, effecting cost savings, while maintaining his or her responsibility to serve in a succession capacity if necessary.

The Board of Examiners (consisting of the governor, attorney general and secretary of state) has oversight authority for the issuance of general obligation debt. If the offices of the lieutenant governor and secretary of state are combined, the state auditor could be designated as the third elected official on the board.

Objectives ■

1. To reduce fragmentation of executive policy making authority.
2. To streamline the management of the executive branch.

LEGISLATIVE REFORM

1. The Task Force recommends continuation of the current 90-day biennial legislative sessions. We encourage the legislature to examine the timing of the sessions to better accommodate citizen participation in the process. Specifically, we urge the Legislature to begin the session later in the first year of the biennium.

2. To raise public awareness of legislative issues, the Task Force encourages the Legislature to provide live broadcasting of legislative activities.

Discussion ■

Delaying the start of the legislative session would allow additional time for orientation of new legislators, greater time for local meetings on legislative issues, and more time for the governor (especially a newly elected governor) to prepare a budget. This change could be accomplished without a constitutional amendment.

The Task Force believes that greater public awareness of the legislative process would benefit the citizenry and its government. Although the Task Force does not advance a particular plan, we encourage broadcasting legislative deliberations by television, radio or other means of telecommunication.

THE JUDICIARY

The Task Force recommends that the Legislature retain the seven-member Supreme Court and that the legislation contain no sunset provision.

Background ■

When the legislature increased the court from five to seven members in 1979, it did so on a trial basis by including a sunset provision in the legislation. Unless that provision is eliminated, the current seven-member court will revert back to five members January 6, 1997.

Discussion ■

The Supreme Court does not control the number of cases it receives; it must rule on all appealed cases. Between 1983 and 1993, the annual number of cases rose from 561 to 659. Similarly, the number of opinions written by each justice increased by 34 percent during the same period.

In a study of American state courts conducted by the University of Arkansas, it was determined that a competent appellate judge can handle 35 to 40 opinions a year. More than 62 opinions were written by each of the justices of the Montana Supreme Court in fiscal year 1993.

If the Supreme Court of Montana returns to a five-member bench, one result would be a 32 percent delay in carrying the present caseload to resolution. Delay in resolution of litigation increases costs to both the public and private sectors by running up court expenses and counsel

fees. But there is a further and greater human cost, and that is stress and anguish over pending resolution of litigation.

The Declaration of Rights of the Montana Constitution (Article II, Section 16) provides
“... Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. . . .”

OTHER RECOMMENDATIONS

MILK DECONTROL

The Task Force urges the governor to introduce legislation calling for a public referendum to eliminate the Milk Control Board and decontrol the price of milk at the retail, wholesale and producer level, leaving in force local, state and federal health regulation of the dairy industry.

Background ■

The milk industry is important to Montana's economy and to Montanans as well. In 1993, it was an \$80 million industry. The average Montanan drinks 28 gallons of milk annually.

State economic regulation of the dairy industry began in the 1930s to counteract adverse economic effects of the Depression. Today, Montana is one of only five states that control milk pricing at the retail or wholesale level.

State milk regulation has declined nationally because of court challenges, legislative repeals of authority and non-exercise of authority by state milk officials. Technological evolution in the industry and market factors have also contributed to a decline in state regulation.

Twice in the past 10 years, voters have retained state price control of milk. In 1984, Initiative 96 proposed the abolition of the State Board of Milk Control, elimination of state control of milk and suspension of license requirements and other regulations on the sale of milk. The Initiative failed 222,200 to 145,342. In 1986, Initiative 104 proposed the decontrol of milk prices at the wholesale/retail level. It failed 160,835 to 153,293.

Discussion ■

Based on survey results from neighboring states, members of the Task Force believe that the free market can more efficiently establish milk prices and that Montanans, including rural Montanans, would benefit from lower-priced milk (see Milk Survey, Appendix 1). We also believe that industry deregulation would prompt an increase in industry efficiencies allowing most Montana producers to remain competitive with out-of-state producers.

Objectives ■

1. To eliminate state regulation of milk pricing.
2. To reduce milk prices for Montana consumers.

LIQUOR PRIVATIZATION

The Task Force recommends that the Governor introduce legislation calling for a public referendum to turn over the merchandising of liquor to private enterprise.

Background ■

Following the repeal of prohibition, Montana was one of 18 states to establish monopoly control of distribution and retail sale of liquor and table wine.

In 1933, the state adopted the Canadian system of distributing liquor through state-operated stores, the only retail outlets for the sale of liquor. In 1937, private retailers were allowed to sell liquor but were required to purchase that liquor from the state. This system continues today. Half of all sales from state stores are to private retailers.

The number of state retail liquor outlets has declined from about 200 in 1940 to 109 in 1994. At first, all the stores were operated by state employees. In 1973 the state began to allow private agents to contract operation of state stores for a commission on sales. Now, all but 26 of the largest stores are operated by agents.

In response to a voter initiative in 1978, the Montana Legislature authorized private distributors to purchase table wine directly from wineries and sell to private retailers, including grocery stores. Previously, table wine distribution and its retail sale for off-premises consumption were exclusively the state's responsibility. The initiative in favor of this change was approved by the electorate by a vote of 169,069 to 112,195.

Discussion ■

Turning liquor merchandising over to the private sector will:

- reduce non-essential state services;
- eliminate state competition with the retail private sector;
- reduce the size of state government by 93.5 FTE, and
- return \$4–\$5 million to the General Fund currently tied up in state-owned liquor inventory.

As a matter of principle, the state should not engage in the sale of liquor and the governor should direct the Department of Revenue to support the effort to bring a public referendum to the voters.

Objectives ■

1. To eliminate the state's functions as wholesaler and retailer of alcoholic beverages and to turn those functions over to private enterprise.
2. To control alcoholic beverage wholesaling and retailing functions no longer provided by the state through the existing framework for alcoholic beverage regulation and quota limitation on the number of retail outlets.
3. To generate the same level of revenue to state and local governments under private enterprise as was generated under state operation.

ONGOING RENEWAL OF GOVERNMENT

The Task Force endorses the notion of ongoing, privately funded government reform efforts. The Task Force believes that an evaluation of government at all levels should be conducted every two years by a new citizens group.

Background ■

Over the past few decades, several groups of Montana citizens have taken on the task of reorganizing our government. Each past effort succeeded in some ways and failed in others. A common feature of each of these reform efforts has been their ad hoc nature.

To add a steady stream of energy to reform, several states periodically evaluate their government. Structured in a variety of ways, the state groups consider governmental remodeling in a deliberate and ongoing manner.

Discussion ■

Similar to the study and consensus model used by Montana's Environmental Quality Council, a Montana commission could examine a specific issue or set of issues and propose small modifications or radical changes. Depending on its design, such a group could be mostly independent of the three branches or directly a part of one. By recommending ongoing reform, the Task Force would supplement its work with a positive statement that comprehensive reform cannot happen overnight and must be considered a continuing challenge.

MONTANA SCIENCE AND TECHNOLOGY ALLIANCE

The Task Force recommends that the Legislature review the need for and the performance of the Montana Science and Technology Alliance.

Discussion ■

The Montana Science and Technology Alliance exists to strengthen and diversify Montana's economy by establishing a public-private partnership to encourage scientific and technological development in the state and to provide a funding source for seed capital and research and development project loans.

GOOD GOVERNMENT RECOMMENDATIONS

The Governor's Task Force to Renew Montana Government had a broad-based charge to review Montana's operating policies and procedures, including personnel, procurement and financial administration policies. The Task Force believes the following recommendations are important to enhance the way government operates.

1. Agencies should be allowed greater flexibility to design their own performance management and reward systems, with the objective of improving the performance of individuals and organizations.

2. Agencies should be allowed additional procurement authority through simplified purchasing procedures.

3. The governor should direct all agencies to identify and survey customers and provide customer service equal to the best in business.

4. State government should decentralize decision-making and increase managers' spans of control.

5. Agencies should develop clear, measurable objectives and report results to the public.

6. The governor should develop written performance agreements with department and agency heads.
7. The governor should issue a directive detailing his vision, plan and commitment to quality government.
8. Agencies should expand their use of alternative dispute resolution techniques.
9. The state should facilitate citizen telephone access to state employees by insuring complete, understandable and “user friendly” telephone listings in each community in Montana.
10. The state should encourage “popular” financial reporting by all levels of Montana government, that is, reporting designed for non-experts that makes financial information accessible and understandable.
11. The governor should coordinate and focus economic development efforts and responsibility.
12. Legislative “Good Government” Issues:
 - Attempt to reduce duplication of bills.
 - Enhance quality orientation and training for legislators.
 - Enhance dissemination of public hearing schedules and provide increased lead time before scheduled hearings.
 - Increase use of state bulletin board and METNET for purposes of public input and information.
13. The State Library should be more assertive in assisting economic development activities. Libraries should play a positive role in expanding electronic access to address informational needs of potential entrepreneurs. The Task Force recommends that at least one public librarian be on the State Library Commission.
14. The governor should advance the notion of “one-stop” shopping for business licensing, including the exploration of a pilot program to design and test a single application for the most common state registrations and licenses.

EDUCATION

SCHOOL GOVERNANCE

The Task Force recommends amending Article X of the Montana Constitution, to create a Department of Education, headed by a director appointed by and reporting to the governor, and the creation of a constitutionally based State Education Commission. The recommendation would require a constitutional amendment because the proposal eliminates the Board of Regents (and commissioner of higher education), the Board of Public Education (and its executive secretary), the Board of Education and the elected superintendent of public instruction. Because the elected superintendent serves on the Land Board, the board should be reconfigured with three members (governor, attorney general and state auditor). Control of school districts would continue to be vested in local boards of trustees as provided by the constitution. (See Appendix 2, Education Governance Structure: Governor's Task Force Recommendation and Current Model.)

The Task Force further encourages the governor, Board of Regents, commissioner of higher education, Board of Public Education, and superintendent of public instruction to continue their efforts to implement Article X, Section IX of the Montana Constitution.

Background ■

A matter of concern to many and confusion to most is the cumbersome combination of offices and authorities which currently oversee Montana's education system. Both the elected superintendent of public instruction and the Board of Public Education appointed by the governor have general supervision over kindergarten through 12th grade education. In addition, the Board of Regents appointed by the governor hires a commissioner of higher education to manage the units of higher education and the vocational technical schools.

Discussion ■

The existing organizational structure is not conducive to coordinated management of kindergarten through graduate school education. The responsibility for implementation of education policy is fragmented and compromised due to the competing perspectives of the Board of Public Education, superintendent of public instruction, Board of Regents, the commissioner of higher education and the governor. Complicating the matter is the fact that the budget for education, which comprises 65 percent of the general fund budget, is submitted directly to the Legislature. The result is that the governor cannot give the same kind of direction and support to education that he gives to health, human services and other areas.

The 1972 Constitution reads in part, "There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board."

The coordination between public education and higher education mandated by the constitution has not been achieved.

Objectives ■

1. To coordinate kindergarten through graduate school education, providing management of a “seamless” educational system, necessary to the making of management and policy decisions on those issues common to kindergarten through 12th grade and higher education.
2. To provide a more cohesive executive level structure for education, thereby facilitating state-wide planning, coordination and improvement of the state’s educational efforts.
3. To provide earlier integration of educational interests in the overall budget process.
4. To separate education policy from partisan politics.

Note: The recommendation attempts to address a concern of the Executive Committee of the 1972 Constitutional Convention that “there is a clear need to resolve the doubt and ambiguity which currently exists as to the respective duties and authorities of the board [of public education] and the superintendent [of public instruction].”

COUNTY SUPERINTENDENT OF SCHOOLS

Eliminate the position of elected county superintendent of schools. Services to school districts, currently provided by county superintendents, should be acquired from the Office of Public Instruction, other county offices, by contract with adjoining school districts or private providers, or through school district reorganization.

Background ■

On February 7, 1865, “An Act Establishing a Common School System for the territory of Montana,” was signed into law. This act detailed the duties of the county superintendent of schools in each county. The duties included revenue collection responsibilities and apportionment of these revenues to the county school fund as well as to each school district. The county superintendent was also responsible for preserving the school lands given by Congress to the Territory for school purposes. In addition, the county superintendent was given the duty of examining and certifying teachers. Any legal voter in the county who could secure the necessary number of votes could hold this office.

Since that time, county superintendents have continued to fulfill their responsibilities in Montana, although the duties have changed and more specific requirements for holding the office have been developed. Today revenue collection is a function of the county treasurer; the Department of State Lands manages school trust lands, and the Office of Public Instruction is responsible for teacher certification. In addition, current technology enables the Office of Public Instruction to communicate directly with school districts without the assistance of the county superintendents of schools.

Although many states originally established the position of elected county superintendent of schools, only a few states still maintain the position. Most states, however, have school district superintendents in all school districts.

The current duties of the county superintendent of schools are outlined in 20-3-2, MCA. Additional duties are identified throughout Title 20. The duties include calculating county transportation and retirement levies, providing supervision to teachers in school districts without superintendents, and acting as hearings officers in contested cases. Some county superintendents volunteer other services to districts including asbestos removal assistance and implementation of the Montana Safety Culture Act.

Funding for the office of the county superintendent of schools is provided through each county's general fund budget. No state or school district revenues are used for providing the services required by statute.

Discussion ■

The primary question the Task Force wrestled with was whether the duties of the county superintendent should remain with the county or whether they should be decentralized to individual school districts. Without the assistance of the county superintendent, school districts would become responsible for ensuring that they meet all accreditation and legal requirements. If it were not possible to meet those requirements, districts would contract for services or annex or consolidate with another district. The county general fund budget would no longer subsidize districts that do not provide appropriately trained supervisors and clerks. Transferring these duties and eliminating this office would reduce county expenditures for this function a minimum of \$2.5 million annually. These savings may be partially offset as districts otherwise acquire needed services.

The Task Force discussed the duties of the county superintendent's position and concluded that these duties could be handled as well, or in some cases better, by other officials or eliminated entirely. For example, the county superintendent's role in contested personnel hearings has been



Left to right: Education Committee member John Bohlinger; Representative Emily Swanson and Education Committee member Ric Floren

subject to frequent criticism. In a recent decision, the Montana Supreme Court stated, "The differing, technical statutory and administrative requirements at the various levels (of the appeal process) are, in themselves, confusing and difficult enough to comprehend. That, however, combined with the fact that the abilities, training and experience of county superintendents and their access to legal counsel fully familiar with school law vary widely, almost assures error at some level of the appeal process." The Court recommended that the legislature scrutinize the appeal procedure in contested cases between teachers and school districts, describing the process as "technical, cumbersome, time-consuming, costly, frustrating and inefficient." (*Baldrige v. Rosebud County School District 19*, 13 Ed. Law 18)

The Task Force discussed several approaches to addressing the concerns regarding procedures for handling contested case hearings, any of which may improve the current procedure. Those

include (a) school districts contracting for these services, for example, with retired judges, or (b) utilizing existing trained state hearings officers. The goal of changing the procedure would be to create a professional record at the initial hearing. The Office of Public Instruction could be removed from the appeals process.

It was also discussed that although the superintendent is chosen by the people, there is no assurance that the person who is the best qualified and most capable of fulfilling the responsibilities will hold the position. The Task Force concluded that the varied expertise and training among the current office holders results in confusion about the actual purpose of the office.

Arguments can be made against eliminating elected county superintendents. Many of Montana's independent elementary school districts that do not employ a certified administrator to assist the teachers and the trustees rely on the county superintendent to provide those services.

The county superintendent of schools provides the Office of Public Instruction with a distribution/collection mechanism and with a method for communicating with all school districts in Montana. The county superintendent is in a position to facilitate interagency cooperation among governmental and private groups and is able to avoid many time-consuming, costly hearings through discussion and negotiation.

The Board of County Commissioners in each county currently has the option of combining the county superintendent's office with another elected office, hiring a part-time county superintendent or contracting for services. Eliminating the position would take away this local decision-making. Elected county superintendents could be assigned additional duties currently being carried out by the Office of Public Instruction, which could include increased responsibilities in the areas of transportation, accreditation and teacher certification. Scaling back the Office of Public Instruction and placing responsibilities closer to the school districts could be cost-effective for the state and could provide greater accountability.

On balance, Task Force members believe the position of elected county superintendent of schools has become outdated and unnecessary. The Task Force believes that with local control of schools comes local responsibility for administering those schools.

SCHOOL DISTRICT REORGANIZATION

1. The Task Force recommends that every five years all school districts (except K-12 districts) be required to review and report their educational effectiveness and efficiency through rules adopted by the Board of Public Education; this report is to be publicized and followed by a public vote to consolidate or not to consolidate with another district.

Following are the types of school districts which would be subject to a public vote under the Task Force recommendation.

a. **Non-isolated small districts:** There are 91 stand-alone district elementary schools within 20 miles of a larger high school district, and some of these are less than five miles from the nearest high school. There are no barriers to effective administration by K-12 districts in these small, non-isolated schools. Technology and site-based management techniques may allow administrative consolidation with as many as 194 non-unified districts, which includes the 156 county superintendent-administered schools in addition to 38 elementary schools with their own superintendent or principal.

b. **High schools of 40 students or less (30 districts—13 of which are isolated because they are located 20 miles or more from another high school and 17 of which are non-isolated):** A high

school should be of sufficient size to utilize staff and provide a program of diversity that affords students the opportunity to maximize learning.

c. Remaining Stand Alone Districts (316 districts): This is the most comprehensive reorganization of school districts which has been discussed. It reorganizes elementary districts so each is affiliated with a high school district, which becomes the unified K-12 district. Thus, the number of districts is reduced by the number of elementary districts, and every district represents a fiscally and administratively unified K-12 sequence. The last K-12 consolidation attempt was Senate Bill 49, introduced in the 1993 Special Legislative Session, which never made it to the floor.

Even the most “radical” K-12 consolidation (SB 49) would have resulted in an average district size of 974 students, or one-third the national average district size.

2. Non-coterminous districts (111 “districts”): Require all elementary/high school districts that operate under a single administration but do not have coterminous boundaries to become a single district with an elementary program and a high school program, effective July 1, 1995. (Note: In advancing this recommendation, the Task Force wants to recognize the current reality that some school administrations provide services to both a high school district and an elementary school district located within the high school district.)

Note: The Task Force urges the Office of Public Instruction to equally enforce accreditation standards for all districts.

Background ■

Montana currently has 481 school districts, defined as separate fiscal jurisdictions for taxing and budgeting purposes. Of these districts, 316 are elementary districts, 122 are high school districts and 43 are K-12 unified districts. A total of 118 districts have combined administrations, which reduces the number of management units to 353. However, a combined management unit must maintain separate budgets for each fiscal district it contains. Of the smallest fiscal districts (fewer than 10 students for elementary or fewer than 25 students for high school), there are 49 that qualify for “isolation” status because of their distance (usually more than 20 miles) from other educational centers.

Compared with neighboring states, Montana has the most districts for its student population. With a statewide public school enrollment of 162,825 students, the average Montana district (using management, not fiscal units) serves about 461 students. North Dakota, which enacted a voluntary district cooperation program in 1989, also has relatively small districts, averaging 472 students per district. South Dakota, which has reduced the number of its districts from more than 3,000 to 178 since the late 1960s, averages 792 students per district. Both Wyoming and Idaho consolidated their districts in the 1960s, and now average 2,032 and 2,095 students per district, respectively. Alaska, the only state more sparsely populated than Wyoming and Montana, averages 2,251 students per district. Even these larger districts are smaller than the national average of 2,863 students per district, or 43,454,000 students in 15,173 districts. Montana, with 0.4% of the nation’s students, has 3.3% of the nation’s school districts, or nearly nine times its enrollment-proportional “share” of districts. Montana has the smallest average school age population per district in the nation.

Discussion ■

Estimating the fiscal or educational results of any district reorganization is a difficult task and one that has been accompanied by much speculation and few comprehensive studies. Still, from the considerable number of reports on district organization, it is possible to establish a few principles to guide expectations of reform.

Cost savings. Any savings from consolidation is unlikely to result in significant savings or tax relief statewide. Case studies of consolidation show that the costs of salary equalization between districts offset administrative savings and economies of scale. Significant savings may be realized in the state educational bureaucracy as a reduced number of districts leads to fewer district-based supervisory responsibilities for the Office of Public Instruction. Furthermore, per-pupil cost of instruction may also decrease, reflecting administrative economies of scale at the local level. But as salary schedules are equalized between districts, much of the savings will be spent. What would probably occur is a transfer of benefits from the central bureaucracy and local administration (through resource-pooling and the elimination of positions) to the teachers (through increased and equalized salaries) and a transfer of costs from state government to local government.

Educational quality. There is a well-publicized nationwide trend toward smaller, decentralized schools. On the surface, this would seem to argue against any plan to enlarge districts. It is important to realize, however, that this idea originated in districts 50 times larger than the average Montana district that wish to reduce to an "ideal" size of five times larger than the average Montana district. Current district reorganization proposals do not threaten the smallness or local flavor of Montana's schools. The relevant consideration is really whether Montana's school districts are large enough to provide the resource base necessary for current and future educational program priorities. Although six students with an exceptionally well-qualified teacher in an extraordinarily efficient rural school district will probably perform above the average, this is hardly the model on which to build a statewide school system. K-12 consolidation would improve curriculum sequencing between primary and secondary levels.

Local control. It is important to realize that consolidation is essentially administrative and does not necessitate school closings; in fact, the most comprehensive K-12 consolidation proposal offered last year placed a five-year moratorium on school closings. Furthermore, site-based management and special school board provisions can accompany consolidation proposals to guarantee board representation equal to—not greater than—other districts of equal population and area.



Task Force members Linda Vaghey, chairman, Education Committee and Eric Feaver

Evolution of the status quo. One final consideration is the ongoing evolution of school district organization in Montana in response to existing policies and other circumstances. Since 1930, the number of districts has decreased sevenfold due to various factors, most of them driven by the urbanization of Montana. This process continues independent of directed reductions, as accreditation standards and fiscal realities drive districts to voluntary consolidation. There are more than 80 one-room schools in Montana, which are rapidly disappearing without political intervention. Over the next decade, Montana would probably lose a substantial portion of its school districts without action on the state level. Furthermore, recently enacted legislation requires coterminous high school and elementary districts to unify, eliminating at least an additional 11 districts by 1995.

COUNTY TREASURERS

1. County treasurers should no longer be monitoring school districts' budgets. As with all other governmental agencies, periodic audits should be made by auditing firms to check for school districts' compliance with state laws and generally accepted accounting principles. School districts of all sizes should be responsible for staying within budget parameters. This responsibility should be taken as seriously as choosing a curriculum, hiring a staff or any other duty of a board of trustees. All district clerks should be required to receive training in school finance.

2. While county treasurers should continue to be "the bank" for school district funds, school districts, not county treasurers, should be required to maintain a list of outstanding warrants. All other checks and balances of these dollars should remain in place. Following each district's audit, any warrants and receipts held by the treasurer should be turned over to the district. Treasurers should speed up the reporting process for larger districts by utilizing electronic warrant processing through their banking systems. Eliminating the budgetary duties will speed up the process by reducing the amount of information needed from the districts. Treasurers' reports should clearly state the source of revenues, the warrant number redeemed and the amount. All treasurers should be encouraged to offer investment pools.

Discussion ■

Montana law requires the county treasurer to open a fund for each budgeted fund included in the final budget of each district, by entering the amount appropriated for the fund on the treasurer's accounting records. Whenever a treasurer receives a final budget amendment for a district from the county superintendent, the amount of the budget shall be increased accordingly.

School district trustees are required to submit the duplicate warrants written by the fund to the county treasurer or to furnish a letter of transfer at the end of each month, indicating the amounts to be transferred from each fund to a claims or payroll fund. The appropriate amounts are to be deducted from each budgeted fund by the county treasurer to determine the balance of each budget on record. The county treasurer is required to notify the district at such time as the appropriation amount is so nearly exhausted that the issuance of further warrants would overdraw the balance of the budget remaining. If an original warrant presented for payment would overdraw the balance in the budget, the county treasurer is to return the warrant unpaid, marked "payment refused, insufficient budget," and return the warrant to the person who presented the warrant for payment. Under state law, the treasurer is not to accept an original warrant unless the duplicate warrant was previously remitted to the treasurer's office.

The county treasurer is required to list the duplicate warrants or to keep a list of the claims and payroll warrants written by the district. Cash warrants are marked "paid" on the list in order for the treasurer to provide an outstanding warrant list to the district on a monthly basis. The total outstanding warrants by fund are also furnished to the county superintendent of schools on the annual report in July.

The county treasurer is responsible for billing and collecting taxes for school districts along with other taxing jurisdictions. Each month the treasurer is required to report to the school district the accounts receivable by year and type, the amounts and sources of cash collected, the warrants drawn against each account, payments of principal and interest on bonds and the cash balance of each budgeted and non-budgeted fund.

The treasurer is also required to invest the money of any district as directed by the trustees, assist in the issuance and sale of tax and revenue anticipation notes and register district warrants when necessary for lack of funds. The treasurer is required to keep the school district financial records, including warrants on file, for a period of five years.

The treasurer, as the issuer of property tax bills, collects revenues for school districts and distributes them to each budgeted fund according to the mills levied by the districts. Fifty-six counties receive funds from federal, state and local sources for 481 school districts. They provide centralized accounting information for requesting agencies and taxpayers. School district payments are made by warrants which must be purchased from a bank.

Proponents for the county treasurer keeping duplicate budget records believe many districts, more often the small districts with no administrator, do not understand the budget process in relation to spending. By duplicating the district records, the treasurer performs the duty of an ex-officio administrator for boards of trustees and/or district clerks with little or no training in school finance. The treasurer may also furnish a cross-check for information requested by the county superintendent of schools.

Proponents also argue that banking facilities may not be readily available to small districts for daily warrant purchases. The counties and the school districts all benefit by drawing greater rates of interest through the use of county investment pools. Small districts, which would not normally make investments, earn interest by this process.

In the final analysis, the Task Force concluded that the responsibility of keeping within a budget belongs to the school district. The treasurer's records are only as accurate as the information furnished by the district. Warrants may be voided without notification to the treasurer. The original warrants are often released well in advance of the time of delivery of the duplicates, making it impossible to comply with the statute requiring that the warrant be returned unpaid due to a lack of budget. Some schools do not receive the monthly reports from the treasurer on a timely basis. Some reports do not detail as much information as necessary. Storing the original warrants for a period of five years creates storage problems for the counties.

TRUSTEE TRAINING

The Task Force recommends the Board of Public Education consider an accreditation standard requiring local school districts to undertake trustee training regarding their roles and responsibilities.

Background ■

The issues surrounding public education are becoming ever more complex. Members of local school boards need knowledge and insight if they are to meet the challenges of preparing students to compete in the next century. Recognizing that trained, educated trustees make good boards and that good boards run sound, effective education programs, 12 states have adopted mandatory trustee training statutes. The penalties for non-compliance differ from state to state, in some cases substantially, by withholding of state funding, removal from office or other rigorous measures to ensure training for every elected school board member.

The Montana School Boards Association (MSBA) has an established School Board Academy, developed to train school board members. Training sessions incorporating a prescribed curriculum, are conducted at 10 locations throughout the state in May of each year. Training sessions are presented at an annual education conference in October; further training opportunities occur several times throughout the year at a variety of sites, with some through telecommunications. MSBA is the only agency in the state qualified and prepared to offer school trustee training.

Discussion ■

Mandatory training avails every school board member of information regarding the basics of school governance, which should include statutory responsibilities, school finance and school law.

Opponents would see required training as another state mandate without accompanying funds to offset the cost of local school districts.

The Task Force believes the benefits of trustee training outweigh this concern.

EQUITY IN HIGH SCHOOL ATHLETICS

The Montana High School Association (MHSA) should be directed to restructure its board to provide gender and racial balance. Specifically, legislation should be prepared for the 1995 Legislature that would:

1. Effective July 1, 1995, (1) require MHSA to open its decision-making process in a way that encourages and allows interested parties to influence MHSA decisions, and (2) restructure membership on the board of control to ensure gender and racial diversity.
2. Require MHSA to submit to a compliance audit by the Montana Legislative Auditor to confirm Item 1.
3. Should MHSA fail the audit, provide for assumption of all accredited high school extracurricular, interscholastic activities by the Office of Public Instruction, effective July 1, 1997.

Discussion ■

The Montana High School Association (MHSA) governs interscholastic high school activities, including varsity level athletics. Currently, 181 accredited Montana schools participating in MHSA-sanctioned activities pay MHSA \$210 per activity per year. This participation fee, entirely public money, amounts to 75 percent of MHSA's annual budget of \$622,000.

MHSA is governed by a seven-member Board of Control with rule-making authority. Four members of the board are elected at the annual MHSA meeting (one from a class AA school; one from a class A school; one from a class B school and one from a class C school). The annual convention of the Montana School Boards Association elects a fifth member. The governor and superintendent of public instruction each appoint one member who must be a lay person representing diverse geographical areas of the state.

MHSA annually convenes a delegates' meeting that features one vote per school, regardless of size. Each voting delegate, typically a school administrator, represents his/her local board of trustees. MHSA, a nonprofit, private, yet largely publicly funded entity is not easily accessed by parties outside the governing structure.

As a result of the way MHSA governs itself, as well as Montana extracurricular activities, the Task Force heard testimony about a continuing concern that MHSA has been slow to realize the objectives of its decade-long commitment to gender equity. These objectives include, but are not limited to, common seasons for common sports and a more open grievance procedure.

In short, because it exists to govern a public function and because it receives and spends public monies, MHSA should recognize its obligation to the public interest and reaffirm its stated commitment to the goals of equity and accessibility in Montana interscholastic activities.

Retain school districts' rights not to accept out-of-district students, but facilitate public school choice by eliminating existing transportation tuition and student tuition statutes, except for out-of-state tuition.

Discussion ■

“Public school choice”—the opportunity of parents and students to attend the public school of their choice—requires that state financial aid follow the student to the school of choice and that there be no financial penalty for either the student or the district as a result of that choice.

Under Montana law, state financial aid follows the student, meaning it accrues to the enrolling school district and not the resident school district. However, Montana law permits individual school districts to charge tuition to any out-of-district student to make up the difference in state-funded student entitlement and in the cost to the district of educating the student. (If the out-of-district student comes from another county, the state pays the entire cost of tuition in addition to the state-established student entitlement.)

The result of this law is that individual school districts charge tuition of varying amounts or, in some instances, no tuition at all. Flathead County high schools, for instance, permit free student movement as space permits from one school district to another. In effect, because they pay no tuition, parents and students in Flathead County may choose to attend, without undue financial penalty, any of four different high school districts. Therefore, public school choice is already fully realized in Flathead County.

It is the general consensus that, given the opportunity, parents and students will make the right choice of a public school for their family. While recognizing that school districts should not have to receive out-of-district students that would force them to exceed their established class size limits, schools should not be permitted to discourage school choice by requiring a tuition payment. Instead, state financial aid should adequately assist individual school districts in meeting out-of-district student costs. The Task Force believes this recommendation will reduce paperwork between the sending and receiving districts (and the county superintendent of schools), eliminate time spent negotiating tuition agreements between districts and put pressure on districts with weak instructional programs to improve the quality of their programs or risk losing students and the state funding and budget authority that go with them.

LOCAL GOVERNMENT

SELF-GOVERNING POWERS

Background ■

The relationship between state and local governments in Montana has a long history of paternalism and dependency. The state legislature attempts to micro-manage the way local communities govern themselves through detailed and voluminous laws, rules and regulations. Local government officials, for their part, often use the rule book as an excuse to avoid taking responsibility for making their own decisions and charting their own course.

Cities, towns and counties are political subdivisions of the state and, in the absence of constitutional restrictions, the legislature has absolute control over the number, nature and duration of powers conferred on such political subdivisions.

Prior to 1972, the Montana Constitution itself imposed certain limits on the powers of local governments, particularly counties. It contained restrictive details as to the organization and existence of certain forms of local governments and embodied the concept that the legislature had control over the power and operation of local governments.

The Constitutional Convention was keenly aware, not only of the flaws of the 1889 Constitution as it related to local governments, but the overly restrictive treatment of local governments by the state legislature throughout the state's history.

In its report to the Constitutional Convention, the Local Government Committee indicated that it did not set out to replace the thinking of 1889 with that of 1972. Rather, it attempted to replace the thinking of 1889 with a broad framework that would allow implementation of the thinking of 1990, 2010, as well as that of 1972.

The goal of the 1972 Constitution was to empower local governments. At the same time it recognized that the achievement of that goal lay with the legislature of the state. Notably, the 1972 Constitution provided, with respect to the powers of local governments, that those powers should be liberally construed and it directed the legislature to establish procedures for the adoption of home rule charters.

It is generally understood and accepted that the legislature has not fulfilled the directives or expectations of the Constitutional Convention with respect to the powers of local governments. In conjunction with the Constitutional Symposium on the 1972 Constitution, sponsored by the University of Montana Law School and held to consider whether a new Constitutional Convention should be called in 1992, University of Montana professor James Lopach, discussed the status of local governments in Montana. He noted that: "Today there is no doubt that Montana counties and municipalities face serious problems. But the lesson of the last two decades under the local government article is that the problem stems from flaws in the partnership of the legislature and local governments and not from the local government article itself."

The crisis in public confidence in government in Montana is self-evident. Tax limitation initiatives, taxpayer lawsuits and petitions to overturn acts of the legislature are all indications that the

traditional approaches to government no longer work. It is time to vest governmental powers in local communities where citizens and taxpayers, through their elected representatives, can decide for themselves what services they want and how to pay for them. Government at any level will never work perfectly, but it works best locally where decision-making is visible, accountability is clear, and anyone can participate. Twenty-two years later, it is time to honor the vision of the Constitution of the State of Montana.

The Task Force believes that a major overhaul of the laws of Montana with respect to local government is necessary to empower local communities and to establish more decision-making power at the local level.

Title 7 of the Montana Codes is the 1,100-page volume of state law containing the statutes governing localities. Its requirements range from the hours a city hall must be open to complex rules regarding debt financing.

1. Task Force members believe it is time to give local citizens the authority to levy local taxes. Specifically, the Task Force recommends a simple change in 7-1-112, MCA, Powers Requiring Delegation. The law would continue to require delegation of the power to authorize a tax on income or the sale of goods or services, unless such a tax is specifically approved by the electorate of the local government. . . . This simple change would entrust local voters to make decisions of taxation not local governing bodies.

Discussion ■

State law precludes a home rule local government from enacting a sales tax or an income tax unless specifically authorized by the legislature. To date, the legislature has not generally granted localities this authority. As the state has come to rely on property tax to meet its obligation to equalize funding for education, the reliance on property tax for government needs has increased substantially. This has left home rule cities and counties, as well as general government cities and counties, dependent primarily upon the property tax. Montana taxpayers believe that the property tax base is overburdened as evidenced by passage of I-105, the property tax limitation approved by voters in 1986. This has left a shortage of general revenues for cities and counties to provide basic services.

City streets, parks, bridges, county roads, public buildings and other facilities that support the economy and lifestyle of Montanans continue to deteriorate without the necessary revenue base to keep them functioning and in good repair. A method to allow for the users of these facilities to pay must be put in place. An infrastructure deficit is more pernicious than a cash deficit in government because it is less visible and its consequences can be postponed longer. It is still a deficit that must be paid for by future generations and the price tag increases the longer it continues. (Note: All of these problems occur equally for non-home rule local governments.)

Local governments have attempted to develop new revenue sources but have been thwarted by the courts and by the legislature. This has inhibited the development of the state because it has prevented Montana's most vital resources, its communities, from dealing adequately with their own problems.

The Task Force does not believe the legislature should fear that local voters will get out of control and pass massive new taxes upon themselves. In today's climate, it is a certainty that any new taxes authorized by the voters would have to be especially well planned, well structured and be for services or facilities highly desired by local communities.

The Task Force believes it would be reasonable, and perhaps desirable, for the legislature to require that any local taxation policies be consistent with state taxation policies. For example, if the voters of a city authorize the imposition of a 1 percent income tax, that tax would be

reported and collected at the time and in the same manner as the state income tax.

2. The Task Force believes home rule governments should have the authority to provide alternative methods of delivering services. Specifically, we recommend adding a sentence to the Mandatory Services section of Title 7 (7-1-114, MCA), which requires that local governments with self-governing powers, carry out any function or provide any service required by state law. To which we would add: “. . . unless the charter, or ordinance, specifically provides an alternative method for carrying out the function or providing the service.”

Discussion ■

State law directs, sometimes in minute detail, how local governments are to provide many services. In a time of rapid change and new technology, some of these provisions may lock local governments into obsolete and archaic methods of providing these services. Local governments should have the freedom to develop alternative methods of providing services when allowed to do so in their own charters. Again, this would put local decision-making in the hands of the voters since charters must be approved by the voters.



From left to right: Task Force members Peggy Jerrel and Gloria Paladichuk and Local Government Committee member Mark Kennedy

3. We believe it needs to be easier for local governments to adopt self-governing powers and change their forms of government. The Task Force proposes to allow all local governing bodies to place questions of form of government and adoption of self-governing powers on the ballot directly.

Discussion ■

Currently, charters and self-governing powers can be adopted either through the voter review process, which occurs every 10 years, or through a petition process, which requires a petition of 15 percent of a government's electors. Self-governing charters would not compromise the power of the voters, but would make it easier for such questions to be placed before them. We strongly believe that adoption of self-governing charters is the key to freeing the creative energies of local communities for the betterment of the state as a whole.

FINANCIAL ADMINISTRATION

The finance and budget administration law for local governments needs to be rewritten and made more concise. This can be done by defining minimum standards for financial and budget administration and by requiring conformance to nationally recognized standards. A

group of financial management practitioners from cities and counties should be convened under the auspices of the Local Government Committee of the Governor's Task Force to Renew Montana Government to completely rewrite the financial administration section of the law.

Discussion ■

Major portions of Title 7 are taken up with finance and budget administration. The finance and budget laws have accumulated over many years, primarily before the computer age and before development of national standards for government finance.

Much of the financial administration law is obsolete, cumbersome and even contrary to good financial practice. For example, current budget law calls for passage of city and county budgets on or before the second Monday in August, nearly two months after the beginning of the fiscal year. This was originally done because assessed valuation for property taxation was not complete until this time. It allowed budgets to be put together with reasonably accurate tax revenue projections.

It would be much more effective for governments to estimate their property tax revenues along with all other revenues and pass a budget prior to the beginning of the fiscal year. However, some local governments use the "second Monday in August" language as a requirement rather than an option. It becomes an excuse for not preparing budgets in advance of the fiscal year. The law needs to be changed to refine the relationship between budgets and the fiscal year. Even better, the fiscal year could be changed to October 1, which would solve many of the timing problems.

The state's role in providing information necessary for sound budgeting practice also needs to be reexamined. For example, revenue information provided to oil and gas counties needs to be timely to allow these counties to adopt better budgeting practices.

There are many examples of detailed requirements in Title 7 which have no business in state law. Just two examples are 7-6-4119, MCA, which defines a "long-short cash account" and 7-6-4124, MCA, which provides a procedure to close inactive accounts. This kind of tiresome detail, defined and acted upon by two local government committees and the entire state legislature, makes no sense in the closing years of the 20th century.

Accounting and financial reporting in particular can be virtually done away with in the state law by referring to nationally recognized standards, which not only are vastly superior to current state law, but must be followed anyway for governments wishing to access national credit markets.

This approach would provide better safeguards for the public than currently exist in state law and would also help bring local governments in Montana up to modern standards in administering their financial affairs. It would further have the effect of improving management information and practice since financial practices defined by national standards are usually grounded in sound management principles.

Objectives ■

1. Define minimum standards for deposit and investment of public money.
2. Set forth minimum standards and authority for budgeting.
3. Define authority and procedures for taxation, including authority and procedures for establishing impact fees for general powers of cities and counties.
4. Determine minimum requirements for accounting and financial reporting.

Background ■

There are no explicit restrictions in the Montana Constitution on the ability of local governments to borrow money or otherwise incur indebtedness to finance their needs. The Constitution simply directs that the legislature shall, by law, limit debts of counties, cities, towns and all other local government entities.

There has never been a complete revision of the laws governing local debt, and the current laws are an amalgamation of enabling legislation extending from the turn of the century with additions, amendments and modifications over the past hundred years as required to meet the exigent needs of local governments. Ideally, all of the provisions contained in Title 7, Chapter 7, and the provisions in other chapters dealing with special taxing districts should be revised and rewritten to form an integrated whole. Instead, for lack of time and resources, the Task Force recommends revision of pertinent provisions in Title 7, Chapter 7, to remove inconsistencies and provide greater flexibility for cities, towns and counties in meeting their financing needs.

Currently, under Montana law, cities and counties can generally incur four basic types of indebtedness: general obligation debt; revenue debt; installment purchases or lease contracts for machinery and equipment, and special assessment debt. The Task Force has addressed two of these areas—general obligation debt and installment purchases—and raised the issue of impact fees.

1. The Task Force recommends that cities and counties be authorized to incur general obligation debt, subject to the same debt limitations, but without a vote, in order to meet the regulations of the Department of Health and Environmental Sciences and the Environmental Protection Agency with respect to solid waste facilities.

Background ■

General obligation debt is debt for which the issuer pledges its full faith, credit and taxing power. Such debt can only be incurred if approved by a prescribed number of registered electors and the amount of such debt is subject to statutorily prescribed debt limitations. Furthermore, repayment of debt is outside the limits of I-105.

Discussion ■

The Task Force believes that the statutes regarding general obligation debt should be revised to be clearer and more consistent between cities and counties and further believes that a review is needed to see whether the statutorily prescribed indebtedness limitations are appropriate under today's conditions.

It is agreed that failure or inability of a local community to comply with certain federal environmental regulations not only jeopardizes the health and welfare of the community, but subjects the local government to fines, penalties and other liability. Consequently, the governing body should have the ability to act in this instance to protect the financial and physical well-being of the community, without having to obtain the necessary approval of the voters, and to do so at the lowest possible cost to the taxpayers by being able to incur general obligation debt (which provides a lower net effective interest rate than other forms of indebtedness).

2. The Task Force recommends several changes to the indebtedness statutes.

- The Task Force recommends that installment purchases not be limited to the acquisition of machinery and equipment. Today, there are many types of expenditures that a local government needs to make that, given the limitations of I-105, it cannot fully pay for from its annual budget. Classic examples are needed repairs to city halls and county court houses and other public buildings, including installation of a new roof, heating system, asbestos removal, energy retrofit improvements, etc. In addition, it is often in the

best interest of a city or county to let contracts for certain bridge or road repairs at one time, paying for them over a period of years. Consequently, the Task Force recommends that financing be available for real property acquisition or improvements, as well as equipment and vehicles as currently authorized.

Background ■

Section 7-5-2306, MCA, allows counties to enter into “installment purchase contracts” payable over a term of 10 years to acquire vehicles or road machinery of any kind, or any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind if the cost exceeds \$4,000, provided that at the time of entering into the contract there is an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to pay the amount payable in that fiscal year and the budget for each year in which any portion of the purchase price is to be paid contains an appropriation for the purchase price.

Similarly, Section 7-5-4304, MCA, allows cities and towns to finance such acquisitions by installment purchase contract over a term not to exceed five years, provided, that if the term for repayment is two years, that one-half must be paid in each year and if the term is three years, then one-third must be paid in each year, and so forth.

Discussion ■

The attorney general has concluded that installment purchase contracts or lease contracts constitute debt within the meaning of the prescribed indebtedness limitations. Indebtedness authorized by these sections is not outside I-105 and thus, the county or city cannot levy outside its I-105 limitations or other statutory mill levy limitations in order to meet its obligations on this type of indebtedness.

■ The Task Force recommends that this form of financing should be broadened to include notes, bonds, loan agreements, and lease purchase arrangements as well as “an installment purchase contract.”

Discussion ■

The state Board of Investments currently has a program available for making loans to local governments on terms, including lower interest rates, which are more favorable to local governments than a typical installment purchase contract provided by a vendor of the equipment. Installment purchase contract financing does not work well when the improvement to be financed is a capital improvement such as a road or bridge. Alternative financing mechanisms would provide local government the flexibility necessary to meet their financing requirements at the least cost.

■ The Task Force recommends the terms for debt should be 10 years for both cities and counties.

Discussion ■

With these changes, “debt” would still be subject to the total indebtedness limitations under existing law and the annual levy to pay principal and interest on such debt would be subject to the limitations of I-105.

3. The Task Force further recommends that legislation be drafted allowing Montana local governments to impose impact fees to address the costs of new development.

Discussion ■

The ability to impose impact fees allows a local government to shift a portion of the costs of providing capital to serve new growth areas from the general tax base to the new development generating the demand for the facilities.

As of June, 1992, 20 states had enabling legislation for the imposition of impact fees and many more states are expected to do so. The statutes of these 20 states provide ample guidance for the enactment of such a statute in Montana. In addition, a substantial body of case law has been developed that provides guidance for drafting enabling legislation for impact fees that would assure the local government that any impact fee imposed would meet state and federal constitutional requirements.

Arguably, home rule governments in Montana can enact impact fees without enabling legislation, although under existing Supreme Court cases, it is not possible to conclude that such arguments would be upheld. It may also be argued that non-home rule charter municipalities can impose such fees absent statutory authorization, as has been argued and upheld in some other states; but again it is impossible to predict the viability of that argument under existing case law in Montana. In any event, the enactment of enabling legislation could preclude a challenge to the imposition of fees on grounds of lack of authority. Such legislation, which has met constitutional challenge in other states, could provide a framework for the imposition of such fees. An excellent overview of local impact fees is found in the Summer 1993 issue of *The Urban Lawyer* (Volume 25, Number 3).

BOARDS AND COMMISSIONS

The Task Force recommends a revision of laws governing city and county administrative boards and commissions.

Background ■

State statute specifies numerous appointed advisory or administrative boards for city and county government. County commissioners, for example, are responsible for appointing members to weed, mosquito control, fair, television and historical preservation boards or councils. Gallatin County has 44 separate advisory bodies with more than 200 public members.

While the rationale behind these advisory bodies may be logical, the cumulative effect is a cumbersome web of administrative inefficiencies.

Filling board vacancies is time consuming and costly. Statutes often specify the number of members, qualifications, terms of office and meeting and residency requirements of board members. Filling vacancies entails a recruitment process that takes considerable time and expense. Sometimes, county commissioners are unable to find citizens willing to serve. Staffing the boards and monitoring when terms expire is time consuming.

Because these boards are created by statute, a degree of inflexibility is built into the structure of local government. Local needs may not be well served by a "one size fits all" statute.

Sometimes board members unknowingly create liability for their governments through their actions or statements.

Objectives ■

1. Modify state statutory requirements for appointed advisory or administrative boards and councils, giving locally elected officials the flexibility to decide which are necessary and the

power to create them by ordinance or resolution.

2. Allow county commissioners to assume the powers of special service district boards instead of creating such boards but, at the same time, grandfather existing service district boards to avoid issues of dissolving current boards.

3. Reduce the administrative complexity and logistical difficulties of filling board vacancies.

4. Empower locally elected officials to create and utilize advisory bodies as locally determined needs dictate.

5. Evaluate boards and commissions individually with input from county and city officials. Some boards, such as city/county planning and health boards have extensive, independent statutory functions and may not be appropriate for the same changes as service district, administrative and advisory boards.

GENERAL STATUTORY CLEAN-UP

The Task Force recommends rewriting and condensing Title 7 (the statutes governing local government) to reduce its sheer volume, eliminate duplication and to standardize and simplify notice procedures. We believe the Local Government Center at Montana State University should undertake this general statutory clean-up.

Background ■

Any 1,100-page document developed over a 100-year period is bound to have duplicative, conflicting and outdated material. Such is the case with Title 7. Title 7 should be an efficient tool for local government officials' use in administering local government. Instead, it is cumbersome and confusing and ready for an overhaul.

Title 7 is so voluminous that its usability is cumbersome at best. Interpretation of laws is often difficult because of conflicting statutes leading to numerous requests for legal opinions.

Procedures, which could be spelled out once for both cities and counties, e.g., dog control, are instead delineated for each. Specific subject areas are delineated in overlapping statutes or in entirely different areas of statute, which results in inconsistencies and outright contradictions. Public notice procedures are needlessly complex, detailed and not uniform, with the result that procedural errors are almost guaranteed to occur.

Detailed state control has been extended through statute into areas best left to local decision makers. One result is that needed change is slowed due to necessary legislative involvement. Another result is the incredible amount of time spent changing relatively insignificant statutes; hence the charge that the state is "micro-managing" local government.

STATE MANDATES

Local governments should recognize their responsibility to demand from the legislature a means of funding state mandates, in accordance with the state laws mentioned above. The Drake Amendment language is clear. If necessary, local governments should enforce it through the courts.

Background ■

Mandates imposed on lower levels of government by higher levels are inherent to our political system. Everything from the Bill of Rights to police protection may be construed as a mandate on localities; they help guarantee order and equity across the Federation.

Recently, however, as states and the federal government have assumed more responsibilities without necessarily having the resources to carry them out, local governments have become the repository of policies which they have neither the resources nor, at times, the will to implement. The cost of these “unfunded mandates” pressures local governments, which are usually more restricted in revenue raising power than state or federal government. Furthermore, the mandates often require local governments to put distant federal priorities before their own, despite the fact that no one knows a locality’s needs better than the locality.

In the early 1970s, welfare and environmental protection programs resulted in an unprecedented level of federal mandates on states and localities. The implementation of both policies was necessarily local, whether manifest in county social service offices or a new municipal water treatment plant. But these federal mandates were kinder to localities — they were federally funded. For example, the Clean Water Act included \$60 billion in aid to cities to build water treatment plants. While many cities did not need the plants to maintain a safe water supply, the capital costs of the plant were largely covered by federal funds. Cities generally overlooked the excess because it provided them a new water system without a local tax increase. Higher and more expensive federal standards were often palatable to localities, even if they were viewed as unnecessary, because someone else was footing the bill.

But as the federal budget deficit increased throughout the 1980s, the “new federalism” sharply reduced funding for federally mandated state programs. The states were forced to assume responsibility for these orphaned budgets, leading to reductions in state programs. As state budgets tightened, legislatures passed program costs down to localities, either directly (through the imposition of user fees on state services) or indirectly (by reducing state enforcement of policies to an ineffective level, forcing the locality to compensate). New water quality standards, requiring the overhaul of many of those federally funded treatment plants, were accompanied by little or no new funding. Meanwhile, costly mandates from executive and judicial branches piled up, in the forms of administrative rules and court decisions. Scores of hiring, procurement and contracting requirements now hamstringing the daily operation of local governments, impeding efficient delivery of services and necessitating additional bureaucracy to monitor compliance.

In order to cover the costs of these mandates, localities have had to raise taxes and cut locally originated programs. The slight concordance which once existed between the means of taxation and the ends of programs, such as the use of income taxes to finance welfare programs and property taxes to finance local services, has eroded; mill levies must now finance a hodgepodge of policies state and federal governments want but won’t pay for. One-tenth to one-quarter of municipal budgets nationwide are now diverted to mandates. Essential services traditionally provided by localities, such as public education and law enforcement, have had to sacrifice funds to meet the priorities of state and federal legislators. The taxation limits imposed by I-105 mean that new unfunded mandates result in a direct trade-off of local services. The locality, where the voice of the people and their parochial needs are most clear, has increasingly become a servant of distant governments unable to pay their own way.

Today, there are 172 federal laws imposing mandates on state and local governments, and at least as many state laws adding to local government obligations. Many of these mandates are fair and necessary. Yet, when state and federal legislation applying to localities exceeds its traditional purpose of empowering local government and guaranteeing equity among jurisdictions, these mandates become burdensome and are, at times, irresponsible. Such mandates impede local government either through the passing down of policy costs which ought to have been borne at the level at which they were created, or through blunt and broad “one size fits all” legislation

which applies a single standard to a diversity of local situations where such standards are either irrelevant or unnecessary.

Recently, state and federal governments have taken notice of unfunded mandates. Last year, October 27th marked “National Unfunded Mandates Day” in Congress, which highlighted the plight of local governments facing unfunded mandates. President Clinton issued an executive order in support of restricting unfunded federal mandates. Senator Conrad Burns (R-MT) also spoke on the issue, urging passage of a constitutional amendment prohibiting unfunded mandates (SJR 148).

As early as 1974, the Montana Legislature tried to contain unfunded state mandates. The so-called Drake Amendment (1-2-112, MCA) stated:

Any law enacted by the legislature... which requires a local government unit to perform an activity or provide a service or facility which will require direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing authorized mill levies or the all-purpose mill levy.

Another law (5-4-201, MCA) complements the Drake Amendment by requiring fiscal notes for laws affecting state or local government.

All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state or of a county or municipality, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect.

Unfortunately, these laws have had only symbolic value since their enactment. Many of the most onerous mandates are indirectly imposed through regulations without attached dollar values or a feasible means of financing.

On last year’s National Unfunded Mandates Day, many Montana counties passed resolutions supporting an amendment to the Montana Constitution barring all unfunded mandates. The most recent direct statement against unfunded mandates by the state legislature occurred in the appropriations bill of last November’s special session. In Chapter 30 (HB 2, “Prohibiting the pass through of general fund reductions to local governments”), the legislature included the following boilerplate language (amd. Sec. 11, Ch. 623, L. 1993):

(3) It is the intent of the legislature that reductions in appropriations to state agencies that are imposed by the 1993 legislature in special session . . . and that are intended as reductions to state agency operations may not cause a reduction in funding or cause an increase in cost to local government entities.

This commitment was welcomed by localities, though it appeared to be somewhat of an afterthought. These principles ought to have been affirmed before the appropriations process began.

MUNICIPAL UTILITY RATES

Legislative action should be taken to deregulate the municipal regulatory powers of the PSC in order to allow communities to regulate their own municipal utility rates, such as water, sewer, electricity and gas. Under deregulation, services could be provided at a local level and elected officials held directly responsible and accountable to the rate payers. Aggrieved rate payers would retain access to the Montana Consumer Counsel and district court for dispute resolution.

Background ■

Currently only 12 states, including Montana, have regulated water utilities, and 6 states, including Montana, have regulated sewer utilities.¹

Wyoming's municipal utilities are regulated by the local government or a local board, both of which have elected or appointed members. The rates outside the city limits or district boundaries are regulated by the PSC, and are set after a cost analysis is performed. Because the Wyoming PSC is not involved in setting rates for municipalities, aggrieved rate payers must bring their concerns to the city council or district court.

Colorado's municipal utilities are regulated by the city council. The PSC has never had jurisdiction over municipal rates inside the corporate boundaries, although they used to have control over rates outside the boundaries. Presently the law states that the Colorado PSC does not have jurisdiction over rates outside the corporate boundaries unless the rates are different from those inside the municipal boundaries. Citizen's complaints can be heard by the city council members.

The statute for regulation of municipal owned utilities is located in Section 69-7-101, MCA:

A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications shall be reasonable and just and, except as provided in 69-7-102, they may not be raised to yield more than a 12 percent increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements. Annual revenues must be computed on any consecutive 12-month period for purposes of this chapter.

State law requires a notice to the public if there is a municipal rate hearing. Appeals of municipal rates and/or utility rules, by aggrieved parties, may be made to the district court in whose jurisdiction the municipality lies.

Significantly, the PSC has no jurisdiction over county water and sewer districts. Some of these districts are sizeable and their rates affect numerous rate payers.

Discussion ■

Arguments can be made for and against municipal regulatory powers, but the Task Force believes local governments should have this authority. Local elected officials, who are generally more knowledgeable about the local utility infrastructure, would be responsible and accountable for operating the utility system instead of the state PSC. Through election of officials and participation in the municipal rate hearings, voters would have a greater opportunity to participate in the management of the utility.

There would be only one set of elected officials exercising regulatory control over the municipalities.

Since a law change in 1981, municipal utility rate requests of less than a 12 percent increase in total revenues are exempt from PSC review. In addition, rate increases necessary to fund federally or state mandated capital improvements are also exempt from PSC review. The result of these two policies is that there were only eight rate hearing requests filed by municipalities in 1992 and six in 1993.

Municipal officials express concern over the time and expense involved in preparing a rate filing for the PSC. They often believe that the costs involved in a rate case could be better spent to increase local utility services or decrease rates.

Arguments can be made for the status quo. Currently the PSC provides rate-making analysis and assistance to communities that lack the expertise and resources to prepare those rates themselves. PSC officials have indicated that if they are removed entirely from the rate-making process that they would not be in a position to continue providing this service.

Some municipalities serve customers outside their municipal boundaries and these people may not get sufficient representation in the development of utility rates.

Certain states endorse comprehensive regulation of municipal utility rates because they prefer professional analysis of proposed rates. Some municipalities feel secure with regulation by the PSC and appreciate PSC rate review and assistance.

INTERGOVERNMENTAL COOPERATION

The Governor of Montana should promote an awards and recognition program to recognize intergovernmental cooperation that generates cost savings, efficiency and better service to the public through creative and innovative efforts. Requests for nominations for recipients of the awards would be widely publicized. Nominations would be accepted from any individual or organization.

Background ■

Intergovernmental cooperation in Montana is an effective way to promote cost savings. The purpose of an awards program is to recognize and encourage creative and functional service consolidation between state and local government agencies. The awards program can serve to “showcase” intergovernmental efforts which effectively reduce costs and/or enhance services to the public.

To promote this program, the governor could hold an annual conference and awards program to recognize teamwork between agencies. The Montana Ambassadors, a group of Montana business and education leaders appointed by the governor to promote economic development and efficient government, have agreed to underwrite the cost of the awards program.

The Montana Association of Counties, the League of Cities and Towns and the Montana School Boards Association have agreed to solicit nominations for awards through their newsletters. These associations are in a position to recommend recipients of the awards.

Several agencies in Montana are already working with other public entities to coordinate their services for a more efficient and cost-effective government. Below are a few examples of current intergovernmental cooperation.

- The Short Term Investment Pool (STIP) created an investment vehicle for funds. STIP was created in 1974 to provide state and qualified local governmental agencies an opportunity to participate in a short-term money market fund. STIP has 91 participants and invests approximately \$258 million for state and local governments.

- Musselshell and Golden Valley counties share the services of a county attorney through an intergovernmental agreement.

- Pondera, Teton and Toole counties worked together to create a regional landfill.

- Cut Bank, Shelby, Browning and Conrad set up a street maintenance equipment pool. These cities share their resources to buy street maintenance equipment.
- The city and county of Missoula have a joint telecommunications system.
- The Board of Investments administers the Intermediate Term Capital Finance Program under which the board makes loans to local government at cost-effective rates.
- The Montana Association of Counties provides workers' compensation insurance to 53 counties and property and casualty insurance to 39 counties. These programs were established in 1986 as a result of increasing insurance rates.
- The Montana Municipal Insurance Authority insures approximately 100 cities and towns for workers' compensation and liability claims. The MMIA was formed by cities and towns in 1985 as a response to the insurance crisis. It has provided lower cost coverage while maintaining fiscal integrity.
- Many counties and cities have cooperative street plowing arrangements.

LOCAL GOVERNMENT REVIEW

The first recommendation adopted by the Governor's Task Force was to develop and promote a public education and awareness campaign regarding the June 7, 1994, local government review election.

Background ■

Montana's Constitution requires that "The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years..." This year marks the 10-year anniversary for local government review. No other state reviews its government in such a sweeping way as Montana.

In February, the Task Force recommended that the Governor "aggressively promote and support the voter review process by encouraging voters to consider reviewing their local governments, by providing information on the review process, and by providing information and assistance to communities who decide to review their governments."

Subsequently, the Local Government Committee prepared flyers promoting the June 7th local government review vote. Governor Marc Racicot was featured in a TV public service message encouraging citizens to vote on June 7th. The Committee worked with the Local Government Center at MSU to distribute news releases to educate voters regarding their ballot choice.

In the end, voters in 33 counties and 79 municipalities voted to undergo this unique "self-examination," which may lead to a change in the way their government works. Nonpartisan local government study commissioners will be elected in November 1994. Within two years, these commissions can recommend a change in the structure of local government. The commission can also recommend no change and indicate that the current structure is suitable and that a ballot proposal for change is unnecessary.

Five optional forms of government are available for study commission consideration. If a study commission decides to write a charter, it has even more options in designing its governmental structure, including city-county consolidation, merger with an adjoining county and service delivery consolidation.

As these commissions begin their work, they might keep these questions in mind:

- What local government design best positions your government to meet the problems and challenges of the 21st century?
- Can overlapping governmental jurisdictions be organized differently, or eliminated entirely, to improve service delivery?
- What government structure will result in the best representation of, and accountability to, its citizens?

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Hi-Noon Petroleum, Missoula, MT
Idaho Pole Company, Bozeman, MT
Interstate Detroit Diesel, Inc., Billings, MT
Jim Gilman Excavating, Inc., Butte, MT
William Jones, Missoula, MT
Kendra L. Kawaguchi, Kalispell, MT
Lake County Bank, St. Ignatius, MT
Mike and Lynette Lavin, Helena, MT
Lazard Freres and Company, New York, NY
Edward Lord, Philipsburg, MT
Conrad Lundgren, Kalispell, MT
Dan Lundgren, West Glacier, MT
Mark Clemow Ranches, Inc., Wisdom, MT
McDonald's Restaurant, Helena, MT
MDU Resources Group, Inc., Bismark, ND
Montana Ambassadors, Helena, MT
Montana Bank, Billings, MT
Montana Power Company, Butte, MT
Montana Community Foundation, Helena, MT
Montana Refining Company, Artesia, NM
Montana Farm Bureau Federation, Bozeman, MT
William and Desiree Moore, Woodside, CA
Morrison Maierle/CSSA, Helena, MT
Randy Morset, Gallatin Gateway, MT
Mountain West Bank of Helena, Helena, MT
Mountain Bank, Whitefish, MT
MP&E Rental and Supply, Helena, MT
Kenneth Newton, Glasgow, MT
Norwest Bank Billings, Billings, MT
John and Marilyn Olson, Sidney, MT
Pacific Steel & Recycling, Great Falls, MT
Charles Pass, Helena, MT

Douglas Phair, Miles City, MT
 Piper Jaffray, Inc., Minneapolis, MN
 Robert Planalp, Bozeman, MT
 Plum Creek Timber Company, Columbia Falls, MT
 Portland General Electric Company, Portland, OR
 Powder River Bank, Broadus, MT
 Prairie Kraft Specialties, Great Falls, MT
 Puget Sound Power and Light Company, Bellevue, WA
 Governor Marc Racicot, Helena, MT
 Rhone-Poulenc Basic Chemicals Co., Shelton, CT
 Rocky Mountain Bank, Plains, MT
 Rocky Mountain Bancorporation, Billings, MT
 Jim Roscoe, Billings, MT
 William P. Roscoe, Billings, MT
 David Schaenen, Billings, MT
 Charles Scheel, Clinton, WA
 Dennis Schreffler, M.D., Billings, MT
 Kermit Schwanke, Missoula, MT
 Terry Srenar, Helena, MT
 Security State Bank, Harlem, MT
 Security State Bank & Trust Company, Polson, MT
 Security State Bank, Plentywood, MT
 Thomas J. Shea, Bozeman, MT
 William Sherman, Portland, OR
 Smith, Barney, Shearson, Inc., Bozeman, MT
 State Bank of Terry, Terry, MT

Swank Enterprises, Valier, MT
 Tabish Brothers Trucking, Missoula, MT
 Traders State Bank, Poplar, MT
 The True Foundation, Casper, WY
 Ron Tschetter, Billings, MT
 U. S. West Communications, Helena, MT
 The U2 Ranch, Whitewater, MT
 Robert Uithof, Libby, MT
 UMC Petroleum Corporation, Houston, TX
 Valley Bank, Belgrade, MT
 Valley Bank, Ronan, MT
 Warren Vaughan, Billings, MT
 John Vuceravich, Rapid City, SD
 Washington Corporation, Missoula, MT
 Washington Water Power Company, Boise, ID
 Western Bank of Billings, Billings, MT
 Western Federal Savings Bank, Helena, MT
 The Western Sugar Company, Denver, CO
 Whitehall State Bank, Whitehall, MT
 Kent Williams, Columbus, MT
 Jan Wolf, Billings, MT
 Wytana Livestock Company, Bozeman, MT
 Yellowstone Bank, Laurel, MT

■ The Task Force is solely responsible for the content of this report.

MILK SURVEY

SIZE POPULATION	VERY SMALL 300/1500	SMALL 2400/3500	MEDIUM 24,000/35,000	LARGE 50,000/160,000
Montana	Wibaux 2.96	Hamilton 2.96	Helena 2.96	Billings 2.96
Utah	Huntington 2.44	Nephi 2.27	Logan 2.07	Salt Lake 2.23
South Dakota	Geddes 2.55	Dell Rapids 2.41	Aberdeen 2.62	Sioux Falls 2.47
Wyoming	Ranchester 2.75	Newcastle 2.49	Laramie 2.39	Cheyenne 2.44
Idaho	Downey 2.40	Gooding 2.19	Twin Falls 1.82	Boise 2.04

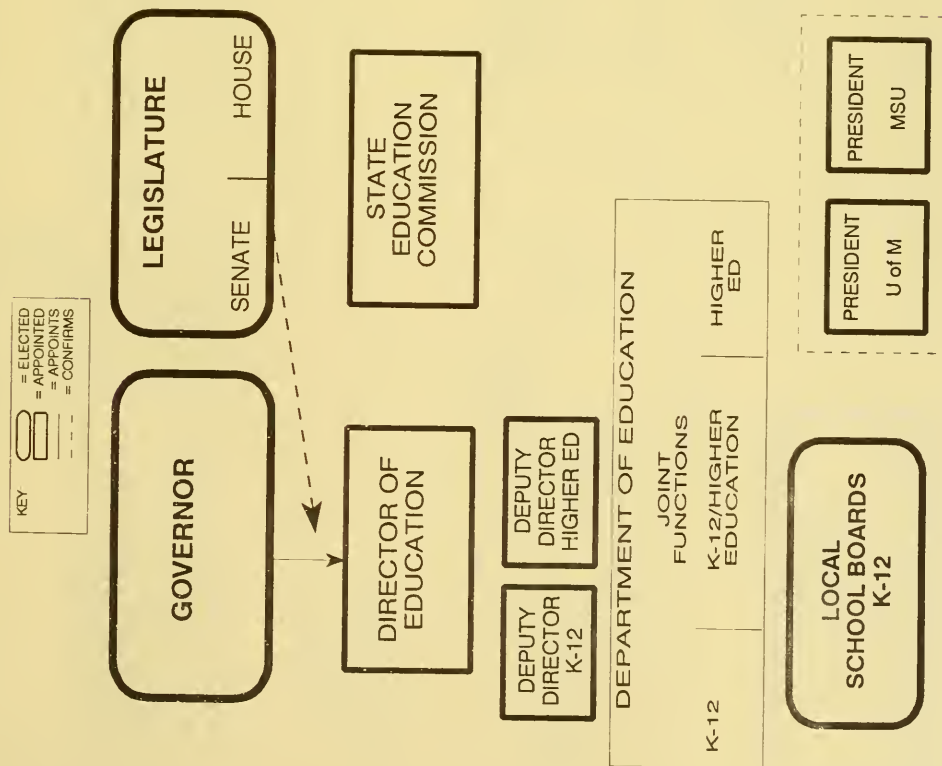
● Survey was taken April 20, 1994

● Prices are for one gallon 2%

● During April, 1994, Malmstrom Air Force Base (which is not controlled by the prices established by the Montana Milk Control Board) was paying \$1.89 per gallon of 2% low fat milk.

RECOMMENDATION

GOVERNOR'S TASK FORCE TO RENEW MONTANA GOVERNMENT



DIRECTOR OF EDUCATION

Member of governor's cabinet and responsible for Department of Education functions/activities.

STATE EDUCATION COMMISSION

A constitutional board with specific policy-making responsibilities

DEPARTMENT OF EDUCATION

Responsible for administration of policies and laws relative to elementary, secondary and higher education

UNIVERSITY SYSTEM

Supervision and management of the Montana university system assigned to the Director of Education and the system's two presidents.

LOCAL SCHOOL BOARDS

Supervision and control of schools in each school district vested in a board of trustees elected as prescribed by law

EDUCATION GOVERNANCE STRUCTURE

Current Model

KEY:
 = ELECTED
 = APPOINTED
 = APPOINTS
 = CONFIRMS

SUPERINTENDENT
 Officer, executive branch; member, board of land commissioners. ex-officio nonvoting member of each component board of the state board of education. *"...shall have such duties as are provided by law."*

GOVERNOR
 Member, board of land commissioners; ex-officio nonvoting member of each component board of the state board of education

LEGISLATURE
"... shall provide a basic system of free quality public elementary and secondary schools."
 SENATE HOUSE

OFFICE OF PUBLIC INSTRUCTION

STATE BOARD OF EDUCATION
 BOARD OF PUBLIC EDUCATION
 BOARD of REGENTS

COMMISSIONER OF HIGHER EDUCATION
 Ex-officio, nonvoting member of board of public education

EXECUTIVE SECRETARY

(Detail to the right)

OFFICE OF THE COMMISSIONER

LOCAL SCHOOL BOARDS K-12
"... supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law."

PRESIDENT U OF M

PRESIDENT MSU

STATE BOARD OF EDUCATION: DETAIL

STATE BOARD OF EDUCATION
 A joint board comprised of members of Board of Public Education and Board of Regents

"... responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor..."

BOARD OF PUBLIC EDUCATION
 7 MEMBERS, 7 YEAR TERMS

"... to exercise general supervision over the public school system..."

BOARD OF REGENTS
 6 MEMBERS, 7 YEAR TERMS
 1 STUDENT MEMBER
 1-4 YEAR TERM
"... shall have full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana university system..."
"The board shall appoint a commissioner of higher education and provide his term and duties."

